

Before the
Administrative Hearing Commission
State of Missouri



PETER E. OKOLIE,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 13-1423 DI

ORDER

We grant in part the motion for summary decision filed by the Director (“the Director”) of the Department of Insurance, Financial Institutions and Professional Registration (“the Department”). The Director has cause to refuse to renew Peter E. Okolie’s resident insurance producer license under § 375.141.1(2), (8), (9), and (10).¹ The Director has not shown cause under § 375.141.1(14).

Procedure

On August 5, 2013, Okolie filed a complaint. The Director filed an answer on September 12, 2013. The Director filed a motion for summary decision on December 2, 2013. Okolie filed a number of documents, but not a formal response to the motion for summary decision, on December 10 and 16, 2013. We granted the Director leave to file a reply. The Director filed his reply on December 23, 2013, and also requested a continuance of the hearing scheduled for

¹ Statutory references are to the RSMo Cum. Supp. 2012, unless otherwise indicated.

January 17, 2013. Because our decision in this case disposes of all but one issue in the Director's complaint, we deny the motion for continuance.

Admissibility of the Exhibits

Under 1 CSR 15-3.446(6)(A),² we may grant summary decision "if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts." The parties must establish the facts by admissible evidence. 1 CSR 15-3.446(6)(B).

The Director submitted a business records affidavit and business records of the Director, (Exhibits 1 and 1A), as well as a business records affidavit and business records from Coventry Healthcare (Exhibits 2, 2A, 2B, 2C, 2D, and 2E). Those records are admissible under § 536.070(10). The Director submitted certified records from the Kansas Department of Insurance (Exhibit 4). Exhibit 4, a certified record of a state agency, is admissible under § 490.220, RSMo 2000. The Director submitted the affidavits of an attorney with the Kansas Insurance Department (Exhibit 5) and an investigator (Exhibit 6). The affidavits are admissible evidence under 1 CSR 15-3.446(6)(B). The Director also submitted certified court records from the Jackson County Circuit Court, case no. 1016-MC04720 (Exhibit 7). Those records are admissible under § 490.130.

The Director also submitted a request for admissions to which Okolie did not respond (Exhibit 3). The Director filed a certificate of service for those admissions with this Commission on October 10, 2013. The request for admissions informed Okolie that he had thirty days to respond. Okolie filed a completed response to the request for admissions on December 16, 2013. He did not file a motion to withdraw his admissions, a motion for leave to file out of time, or any other motion. The Director asks us to find that Okolie untimely filed his response to the request for admissions and not to consider them.

² References to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

We consider Okolie's belated response as an implicit motion to withdraw his deemed admissions. We grant the motion and allow Okolie to withdraw his admissions. Supreme Court Rule 59.01(b) allows for "withdrawal or amendment" of admissions when "the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy [us] that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits." We find, after consideration of Okolie's responses, that allowing him to withdraw his admissions will serve the interests of justice and will not prejudice the Director. We therefore will consider Okolie's admissions withdrawn and will not rely on Exhibit 3. As further discussed below, however, that does not mean we consider Okolie's responses.

Okolie submitted multiple documents by fax to this Commission. He did not provide us with a list of those documents, so we label them according to the time-stamp that appears on each document.³ We will consider each of those documents in turn:

1. December 16, 2013 fax (1:40 PM). This filing contains an affidavit by Okolie. This document is admissible evidence and we consider it. 1 CSR 15-3.446(6)(B).
2. December 16, 2013 fax (1:44 PM). This filing contains a cover page and two additional pages. The first page is a handwritten document entitled "The Big Picture in View to Consider." We construe that page as a written argument. The second page consists of a fragment of Okolie's response to the request for admissions and the heading to § 374.210. As discussed below, Okolie's response to the request for admissions is not admissible evidence. We will consider § 374.210 insofar as it is relevant to this case.

³ Okolie filed numerous documents on December 10, 2013, including the responses to admissions, the "outline of appeal," and unverified letters about Okolie's character. All of these filings are duplicative to, and not as complete as, the documents filed on December 16, 2013, so we do not discuss them separately.

3. December 16, 2013 fax (1:56 PM). This filing contains a letter that we construe to be a response to the Director's summary decision motion. The letter is identical to the one filed with Okolie's complaint. This filing also contains three unsworn letters about Okolie's character. Those letters are hearsay and are not admissible evidence.
4. December 16, 2013 fax (2:00 PM). This filing contains five pages of what appear to be records from the Missouri Department of Revenue. Because they are unauthenticated, this evidence is inadmissible hearsay.
5. December 16, 2013 fax (2:04 PM). This filing consists of Okolie's responses to the request for admissions, which are neither signed nor sworn. Okolie's admissions against his interest would be admissible evidence. *Mo. Bank, N.A. v. City of Grandview*, 179 S.W.3d 362, 371 (Mo. App. W.D. 2005). However, Okolie's responses are not against his interest; instead, they are statements defending his conduct. Further, Okolie presents his own discovery responses. Under our regulation 1 CSR 15-3-446(6), a "discovery response of the **adverse** party" is admissible evidence. (Emphasis added). Okolie's responses therefore are hearsay and are not admissible evidence. If Okolie wanted these responses to be admissible evidence, he should have put them in an affidavit such as the one we found to be admissible evidence.
6. December 16, 2013 fax (2:09 PM). This filing includes a document titled "Outline of Appeal" as well as documents from Coventry Health Care and Midwest Marketing Association, as well as a letter from Okolie's lawyer to Coventry. We will consider the "Outline of Appeal" as a response to the Director's summary decision motion. The documents from Coventry Health Care and Midwest Marketing Association are

incomplete and unauthenticated and therefore inadmissible. The letter from the attorney is hearsay and is also inadmissible.

7. December 16, 2013 fax (2:27 PM). This filing contains records from Coventry Health Care. Although they are unauthenticated, we note that they are the same documents as previously submitted in the Director's Exhibit 2B.
8. December 16, 2013 fax (4:44 PM). This filing contains a handwritten document entitled "The Allegation Compliance Case Against Peter The Big Picture in View to Consider." We consider that page to be an argument opposing summary decision.

Okolie also wrote various comments about the evidence on the records that we have admitted. Those unsworn comments are hearsay and not admissible evidence. Thus, we do not consider any of Okolie's handwritten additions to the documents we deem to be admissible evidence. We will consider those handwritten comments as argument.

Okolie's attempted refutation of the Director's facts

Okolie did not file a formal response stating which of the Director's proposed facts he disagreed with. In a civil case in circuit court, a party must file a response to a motion for summary judgment. That response must "set forth each statement of fact in its original paragraph number and immediately thereunder admit or deny each of movant's factual statements." Supreme Court Rule 74.04(c)(2). A response that does not comply with Rule 74.04(c)(2) admits the truth of the numbered paragraph. When "a party's response to a motion for summary judgment fails to comport with [Rule 74.04(c)(2)], the facts asserted in the motion for summary judgment are to be taken as true." *Strable v. Union Pacific R. Co.*, 396 S.W.3d 417, 425 (Mo.App. E.D. 2013).

While Supreme Court Rule 74.04 is not binding in proceedings before this Commission, and while we do not apply the same unforgiving standard in Rule 74.04, we see merit in

requiring a party to submit a clear and concise statement of challenged facts. Okolie has provided us with no such statement. We therefore are left to determine which facts he challenges and which facts he admits. That job is difficult due to the disorganized and rambling nature of Okolie's response. We thus must look at Okolie's admissible evidence to determine what it shows.

We first consider Okolie's affidavit. Paragraphs one through seven and ten appear to contest whether Okolie forged the signatures on the insurance applications for R.A. and C.B. We find, for reasons discussed in our conclusions of law, that collateral estoppel bars Okolie from relitigating those facts. Those paragraphs do not aid us in deciding this case.

Paragraph eight of the affidavit references Okolie's "pay plan" for his delinquent taxes. As discussed in our conclusions of law, the Director has produced no evidence there was a court or administrative order requiring Okolie to pay his taxes. Whether Okolie had a plan to pay his taxes is not relevant to this case.

Paragraph nine reads: "[a]bout Kansas Insurance Dept. matters. Ms. Zagoras of Mo. Insurance dept., was in the works." This cryptic comment seems to refer to some type of contact that Okolie had with the Missouri Department of Insurance about his Kansas revocation. We cannot deduce what Okolie intends for this statement to mean. We therefore do not ascribe it any evidentiary value.

Okolie presented purported business records from Coventry Health Care and Midwest Marketing Association. As previously noted, those documents are unauthenticated and inadmissible. Even if we considered them, however, Okolie has submitted them as evidence of a conspiracy between Coventry and Midwest Marketing Association to make up allegations against Okolie in order to avoid paying him commissions. The alleged existence of such a conspiracy is outside the scope of this proceeding because it is irrelevant to whether the Director

has cause to refuse to renew Okolie’s license. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Krispy Kreme Doughnut Corp. v. Director of Revenue*, 358 S.W.3d 48, 53 (Mo. banc 2011), *quoting Martin v. City of Washington*, 848 S.W.2d 487, 491 (Mo. 1993).

Therefore, the following findings of fact are based on the Director’s Exhibits 1, 2, 4, 5, 6, and 7.

Findings of Fact

1. The Director issued a resident insurance producer license to Okolie on July 17, 1981.
2. The Director received Okolie’s “Uniform Application for Individual Producer License Renewal/Continuation” on July 10, 2013.
3. On July 15, 2013, the Director issued an order refusing to renew Okolie’s license under § 375.141.1(2), (8), (9), (10), and (14).

The insurance forms for R.A. and C.B.

1. On November 12, 2009, R.A. died.
2. On March 5, 2012, Okolie signed R.A.’s name to an individual enrollment request form for a Coventry Health Care Medicare Advantage Plan for R.A., and submitted it to Coventry.
3. On March 8, 2012, Okolie signed and submitted an individual enrollment request form for a Coventry Health Care Medicare Advantage Plan for C.B.
4. Okolie forged C.B.’s signature on that application.
5. C.B. complained to Coventry Health Care that he did not sign the application to enroll in a Coventry Health Care Medicare Advantage Plan.

6. C.B. provided Coventry Health Care with an affidavit confirming that the signature on the application purporting to be C.B.'s is a forgery.

The Kansas Revocation Proceeding

7. Okolie possessed a Kansas resident insurance license that was issued on October 4, 2011.

8. The Kansas Commissioner of Insurance issued a summary order on September 20, 2012, proposing to revoke Okolie's license.

9. The Kansas Commissioner of Insurance found that Okolie signed an "individual enrollment request form dated March 5, 2012, for a Coventry Medicare Advantage Plan in the name of a person, [R.A.], who died November 12, 2009, and the application contained the purported signature of the deceased person." Ex. 4 ¶6.

10. The Kansas Commissioner of Insurance also found that Okolie "submitted an individual enrollment request form dated March 8, 2012, for a Coventry Medicare Advantage plan in the name of a person, [C.B.], a living person, and the application contained the forged signature of the named applicant." *Id.* at ¶7.

11. Okolie argued to the Kansas Commissioner of Insurance that he "signed the applications but did so to obtain coverage at the request of the consumers" and that Coventry "made the allegations in order to avoid paying renewal commissions." *Id.* at ¶¶9-10.

12. The Kansas Commissioner of Insurance explicitly did not decide whether Coventry had an "ulterior motive" for terminating Okolie's agent appointment. *Id.* at ¶11.

13. The Kansas Commissioner of Insurance found that Okolie's license could be revoked under Kan.Stat.Ann. 40-4909(a)(8) because Okolie used a "fraudulent and dishonest practice" and under Kan.Stat.Ann. 40-4909(a)(10) for having "forged another person's name to an application for insurance." *Id.* at ¶15-16.

14. The Kansas Commissioner of Insurance stated that the summary order would become a final order if Okolie did not request a hearing within fifteen days.
15. Okolie requested a hearing.
16. During a prehearing conference, Okolie withdrew his request for a hearing.
17. Okolie's Kansas insurance provider license was finally revoked on July 23, 2012.
18. Okolie had thirty days to file a Petition for Judicial Review challenging the revocation.
19. Okolie did not file a Petition for Judicial Review challenging the revocation.
20. Okolie did not inform the Director of the Kansas revocation within thirty days of July 23, 2012.

Okolie's Missouri income tax debts

21. On March 19, 2010, the Director of Revenue filed a certificate of tax lien in the Circuit Court of Jackson County, case no. 1016-MC04720, based on Okolie's failure to pay \$600.35 in taxes for the 2006 and 2007 tax years.

Conclusions of Law

We have jurisdiction to hear this case. §§ 374.051.2 and 621.045. The Director has the burden of proof. § 374.051.2. The Director alleges that there is cause to refuse to renew Okolie's license under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

* * *

- (2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

* * *

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization;

* * *

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

Collateral Estoppel

The Director contends that Okolie is collaterally estopped from challenging the factual findings of the Kansas Commissioner of Insurance, specifically the findings that Okolie signed R.A.'s name and forged C.B.'s name on insurance applications without authorization. Okolie has not set out any arguments against collateral estoppel. We agree with the Director.

Collateral estoppel "is used to preclude the relitigation of an issue that already has been decided in a different cause of action." *Brown v. Carnahan*, 370 S.W.3d 637, 658 (Mo. 2012).

There are four components to collateral estoppel:

- (1) whether the issue decided in the prior adjudication was identical to the issue presented in the present action;
- (2) whether the prior adjudication resulted in a judgment on the merits; and
- (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication.
- (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit.

King Gen. Contractors, Inc. v. Reorganized Church of Jesus Christ of Latter Day Saints, 821 S.W.2d 495, 500 (Mo. 1991). "Collateral estoppel only pertains to those issues which were necessarily and unambiguously decided" in the prior proceeding. *Id.* at 501. Collateral estoppel

may apply when the prior proceeding was an administrative hearing. *State ex rel. Div. of Family Services v. White*, 952 S.W.2d 716, 718 (Mo.App. E.D. 1997); *Bresnahan v. May Department Stores Co.*, 726 S.W.2d 327, 330 (Mo. 1987).

Here, the Kansas Commissioner of Insurance found that Okolie violated Kan.Stat. Ann. 40-4909(a)(8) and (10). The Kansas Commissioner found that Okolie signed an “individual enrollment request form dated March 5, 2012, for a Coventry Medicare Advantage Plan in the name of a person, [R.A.], who died November 12, 2009, and the application contained the purported signature of the deceased person.” Ex. 4 at 3, ¶6. The Kansas Commissioner of Insurance also found that Okolie “submitted an individual enrollment request form dated March 8, 2012, for a Coventry Medicare Advantage plan in the name of a person, [C.B.], a living person, and the application contained the forged signature of the named applicant.” *Id.* at ¶7. Okolie argued that he “signed the applications but did so to obtain coverage at the request of the consumers” and that Coventry “made the allegations in order to avoid paying renewal commissions.” *Id.* at ¶¶9-10.

The factual issues in the Kansas action, whether Okolie signed R.A.’s name to an insurance contract and forged C.B.’s name to an insurance contract, are two of the factual issues that exist in this action. The first collateral estoppel factor is met.

The second collateral estoppel factor is whether the Kansas action resulted in a decision on the merits. “On the merits” means that the decision was rendered not upon a preliminary or technical point, or by default, but after argument and investigation, and determination of which party was in the right. *Wilkes v. St. Paul Fire and Marine Ins. Co.*, 92 S.W.3d 116, 121 (Mo.App. E.D. 2002). A final judgment settles all of the issues in the case, and leaves nothing to be decided later. *Buemi v. Kerckhoff*, 359 S.W.3d 16, 20 (Mo. 2011). Finality also means that the

decision is not subject to further appeal. *Korte v. Curators of Univ. of Mo.*, 316 S.W.3d 481, 489 (Mo.App. W.D. 2010).

Here, Okolie had the opportunity to dispute the facts alleged in the Kansas proceeding. Ex. 4 at 4, ¶8. Okolie admitted that he signed the applications. *Id.* at ¶9. The Kansas proceeding ended in the revocation of his Kansas license, which disposed of all the issues before the Kansas Insurance Commissioner. *Id.* at 1-2; Ex. 5 at ¶7. Okolie did not file an appeal from that decision. Ex. 5 at ¶9. We therefore conclude that the Kansas decision resulted in a judgment on the merits and that the Director satisfied the second collateral estoppel factor.

The third factor is met because Okolie was a party to the Kansas action.

The fourth factor is met because Okolie had a full and fair opportunity to answer the factual allegations and have a full hearing, even though he declined that opportunity.

For these reasons, we conclude that collateral estoppel bars Okolie from challenging the fact that he signed R.A.'s name, and forged C.B.'s name, on insurance applications. Collateral estoppel also bars him from arguing in this action that he had authorization to sign documents for R.A. or C.B.

Violation of Statutes – Subdivision (2)

Section 375.141.1(2) allows for the Director to refuse to renew Okolie's license if Okolie violated any "insurance laws." The Director asserts that Okolie violated § 375.141.6.

Section 375.141.6 requires every insurance producer to:

report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

Section 375.141.6 is an "insurance law" because it specifically applies to insurance providers

and places a duty on those providers. Okolie did not report the Kansas revocation of his insurance agent license to the Director within thirty days.

Okolie stated in his affidavit that “about Kansas Insurance Dept. matters, Ms. Zagoras of Mo. Insurance dept., was in the works.”⁴ We take this to mean, in the light most favorable to Okolie, that he had some conversation with a representative of the Director about the Kansas discipline. Conversation, however, is not enough. Okolie had to submit a “report” including a copy of the Kansas order. Okolie presents no evidence that he sent the Director a copy of the Kansas order. Okolie thus violated § 375.141.6.

There is cause under § 375.141.1(2) for the Director to refuse to renew Okolie’s license.

Dishonest insurance practices—subsections (8) and (10)

Section 375.141.1(8) allows for the Director to refuse to renew Okolie’s license if Okolie used “fraudulent, coercive, or dishonest practices, or demonstrate[ed] incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.” Dishonesty is a lack of integrity or a disposition to defraud or deceive. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004). Okolie completed an application for a Medicare Advantage Insurance plan for R.A. even though R.A. was dead at the time of the application. Okolie then forged C.B.’s signature onto a separate application for a Medicare Advantage plan. We have no trouble finding that Okolie’s conduct was inherently dishonest.

It was also fraudulent. Fraud is “generally under the common law as an intentional perversion of truth to induce another, or to act in reliance upon it.” *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 2 (Mo. App. W.D. 1997). Okolie submitted forged applications for insurance so that he could collect commissions.

⁴ All capitalization and punctuation is unaltered from the affidavit.

“Untrustworthy” is defined as “not trustworthy” and “trustworthy” is defined as “worthy of confidence.” WEBSTER’S THIRD NEWS INT’L DICTIONARY 2457, 2514 (1986). Fraud is defined “generally under the common law as an intentional perversion of truth to induce another, or to act in reliance upon it.” *Hernandez v. State Bd. of Registration for the Healing Arts*, 936 S.W. 2d 894, 899, n. 2 (Mo. App. W.D. 1997). Okolie’s conduct was not worthy of confidence because he forged two purported consumers’ signatures. Okolie committed fraud because he intended for Coventry to rely on the forged signatures.

Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession. *Albanna v. State Bd. of Regis’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009). Incompetency is not necessarily established by a negligent act, or even a series of negligent acts, but by demonstration that the professional is unable or unwilling to function properly. *Id.* at 436; *Tendai v. State Bd. of Regis. for Healing Arts*, 161 S.W.3d 358, 369 (Mo. 2005). By submitting two applications for insurance with forged signatures, Okolie demonstrated that he is unwilling to function properly in the profession of insurance producer. We find he was incompetent.

There is cause under § 375.141.1(8) for the Director to refuse to renew Okolie’s license.

Section 375.141.1(10) allows for the Director to refuse to renew Okolie’s license if Okolie “sign[ed] the name of another to an application for insurance[.]” The evidence is undisputed that Okolie signed R.A.’s name and C.B.’s name on insurance applications. There is cause under § 375.141.1(10) for the Director to refuse to renew Okolie’s license.

Revocation of Kansas license—subsection (9)

Section 375.141.1(9) allows for the Director to refuse to renew Okolie’s license if Okolie “[has] an insurance producer license, or its equivalent ... revoked in any other state, province,

district or territory.” The Kansas Commissioner of Insurance revoked Okolie’s Kansas insurance agent license.

Section 375.012(6) defines an insurance producer as “a person required to be licensed pursuant to the laws of this state to sell, solicit, or negotiate insurance.” Under Kansas law, an insurance agent is “an individual ... authorized in writing, by any insurance company or health maintenance organization lawfully qualified to transact the business of insurance ... in this state ... to negotiate or effect contracts of insurance ... on behalf of any such insurance company or health maintenance organization” Kan.Stat.Ann. 40-239 (West 2012). Both statutes define insurance agents or insurance producers as persons who negotiate insurance contracts. We conclude that a Kansas insurance agent license is the equivalent of a Missouri insurance producer license. *See Graue v. Missouri Property Ins. Placement Facility*, 847 S.W.2d 779, 783 (Mo. banc 1993) (“insurance agents fall within the meaning of ‘licensed producers’”).

There is cause under § 375.141.1(9) for the Director to refuse to renew Okolie’s license.

Court order to pay taxes—subsection (14)

Section 375.141.1(14) allows the Director to refuse to renew Okolie’s license if Okolie failed “to comply with any administrative or court order directing payment of state or federal income tax.” The Director relies solely on a tax lien filed by the Missouri Director of Revenue in the Jackson County Circuit Court, Ex. 7.

A tax lien itself is not a court order. An order is a “mandate; precept; command of direction authoritatively given.” BLACK’S LAW DICTIONARY 1096 (6th ed. 1990). A lien, in contrast, is “a charge on property for payment or discharge of a debt or duty.” *Scroggins v. Red Lobster*, 325 S.W.3d 389, 394 (Mo.App. S.D. 2010), *quoting Marvin’s Midtown Chiropractic Clinic, L.L. C. v. State Farm Mut. Auto. Ins. Co.*, 142 S.W.3d 751 (Mo.App. W.D. 2004). In other words, a lien is “simply a mechanism that aid[s] in the collection of specific proceeds from

specific property.” 325 S.W.3d at 394. A lien is not a command to Okolie; it is a mechanism for the Director of Revenue to utilize in order to ensure that the taxes are paid. The lien is not an order directing Okolie to pay his taxes.

In order to file for a lien, the Director of Revenue had to issue a final assessment of tax. § 143.902.⁵ The lien itself reflects that the Director of Revenue made a final assessment. That assessment, however, is not an administrative command or mandate to pay taxes. It merely tells the taxpayer how much he or she owes and does not set out any consequences for failure to pay. §§143.621 and 143.641.⁶ Because there is no proof in the record of an order to Okolie to pay taxes, the Director has not shown cause to refuse to renew Okolie’s license under § 375.141.1(14).

Okolie’s remaining arguments

Okolie’s “Outline of Appeal” and his complaint set out several additional arguments. None are persuasive.

Okolie first argues that there is a “rush to rubber stamp Coventry’s purported investigations half results to discipline.” *Complaint* at ¶1. He also argues that there was a “rush to obtain affidavits to support and sustain improper investigation” and “a rush to visit agent[’]s former clients[’] family.” *Id.* at ¶5. These arguments appear to us to be an attack on the weight of the Director’s evidence. His handwritten notes on the documents he provided also argue that he did not forge the signatures. These arguments all fail because Okolie is collaterally estopped from challenging the facts found by the Kansas Commissioner of Insurance. Those findings show that he forged two client’s signatures.

Okolie also contends that there are “[e]lements of racism, prejudice and defferential [sic] treatments” toward him. *Id.* at ¶2. He further contends that Coventry Health Care and Midwest Marketing Association pursued this action because of Okolie’s “aggressive demands” for

⁵ RSMo 2000.

⁶ RSMo 2000.

commissions and in order to find a way not to pay Okolie. *Id.* at ¶¶3, 4. His document entitled “The Big Picture in View to Consider” continues those themes. We make no findings on whether Coventry Health Care or Midwest Marketing Association racially discriminated against Okolie or improperly dismissed him as an agent. We determine only that there is cause for the Director to refuse to renew Okolie’s license—which is the only decision we have the statutory authority to render. If Okolie wishes to pursue his claims of discrimination and improper treatment, he will have to do so in a different forum.

Next, Okolie contends that the Kansas revocation proceeding was a “sham,” that the “judge did not preside accordingly but allow[ed] the other side to dominate during teleconferencing.” Fax dated December 10, 2013 at 12:59 PM, page 2. Okolie appears to be attacking the process that he received in the Kansas revocation proceeding. Okolie cannot use this proceeding to collaterally attack the Kansas revocation proceeding. “Generally, the validity of a judgment can only be attacked by direct appeal, not by collateral attack.” *Hamilton v. State*, 412 S.W.3d 333, 336 (Mo.App. W.D. 2013), *quoting Reid v. Steelman*, 210 S.W.3d 273, 282 (Mo.App. W.D. 2006).

Finally, Okolie submits § 374.210. He offers us no reason why this statute applies to this case. Section 374.210 prohibits a person in an investigation under Chapter 374 to make false statements in the course of the investigation and allows the Director to obtain subpoenas from a court during an investigation. We find that § 374.210 is irrelevant to this action.

Our discretion

In many applicant cases, the appeal vests in this Commission the same degree of discretion as the licensing agency, and we need not exercise it in the same way. *State Bd. of Regis’n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012). But § 374.051.1 states:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. **Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.**

(Emphasis added). Under this provision, we have no discretion when there is any cause to refuse the issuance of a license. Okolie argues that his record has been clean and that he has good character. Those arguments go to the Director's decision whether or not to renew Okolie's license. The Director decided not to renew it.

We have found that the Director has cause to deny Okolie's renewal application under § 375.141.1(2), (8), (9), and (10). As we have no discretion in this matter, this finding is sufficient.

Summary

The Director has cause to refuse to renew Okolie's license under § 375.141.1(2), (8), (9) and (10). The Director has not shown cause to refuse under § 375.141.1(14). If he wishes to proceed to hearing on the last point, he shall inform us by January 14, 2014. Otherwise, we will cancel the hearing.

SO ORDERED on January 10, 2014.

\s\ Karen A. Winn
KAREN A. WINN
Commissioner